

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**IN RE NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION**

**MDL No. 2419
Dkt. No 1:13-md-2419 (RWZ)**

THIS DOCUMENT RELATES TO:

All Cases

**Certificate of Compliance with Local Rule 37.1 in Support of
Motion to Compel Response to
Subpoena to the United States Food and Drug Administration**

Defendants Saint Thomas Outpatient Neurosurgical Center, LLC; Howell Allen Clinic, a Professional Corporation; John Culclasure, MD; Debra Schamberg, RN, CNOR; Vaughan Allen, MD; Specialty Surgery Center, PLLC; Kenneth R. Lister, MD; Kenneth Lister, MD, PC; and Donald E. Jones, MD (collectively “Tennessee Clinic Defendants”), hereby provide this *Certificate of Compliance with Local Rule 37.1 in Support of Motion to Compel Response to Subpoena to the United States Food and Drug Administration*.

On April 14, 2015, the Tennessee Clinic Defendants moved the Court to compel the United States Food and Drug Administration (“FDA”) to comply with the previously-served subpoena for production of documents and for production of a Fed. R. Civ. P. 30(b)(6) witness or witnesses.¹ The Motion mentioned but did not specifically certify the pre-moving conference process, as required by Local Rule 37.1.

¹ Dkt. Entry 1775.

Prior to filing the Motion to Compel, counsel for the Tennessee Clinic Defendants met and conferred with counsel for the FDA via telephone at 9:00 a.m. EDT on April 14, 2015. The parties conferred for approximately fifteen (15) minutes but were unable to resolve the FDA's general objections to the subpoena, necessitating the Motion to Compel. Electronic mail and written correspondence has also been exchanged regarding objections to the subpoena. The Tennessee Clinic Defendants expect that additional conferring will occur between the parties before the hearing on the Motion, in hopes of resolving some of the issues.

Additionally, the Tennessee Clinic Defendants include a certificate of compliance with Local Rule 37.1 in the margin below.²

Respectfully submitted,

GIDEON, COOPER & ESSARY, PLC

/s/ Chris J. Tardio

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* Admitted pursuant to MDL Order No. 1.

** Admitted *pro hac vice*.

² Counsel for the Tennessee Clinic Defendants hereby certifies that the Tennessee Clinic Defendants have complied with the provisions of Rule 37.1 of the Local Rules of the United States District Court for the District of Massachusetts.

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing and copies will be e-mailed or mailed via regular U.S. mail to those participants identified as unregistered this 27th day of April, 2015. Additionally, this document will be served via email to counsel for the FDA.

/s/ Chris J. Tardio

Chris J. Tardio